IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.1962 OF 1989

Messrs Asksons Mechanical Enterprises ..Plaintiffs

Versus

Messrs Eastern Paper Mills Ltd. ..Defendants

Mr.Girish Mangeshwar i/b R.D.Suvarna for plffs.

none for defendants.

CORAM : P.V.KAKADE, J.

DATE : 27TH AUGUST, 2004.

P.C.:

1. The plaintiffs have filed this suit against the defendants for recovery of the amount of Rs.85,465-32 along with interest @ 24% p.a. on principal amount of Rs.50,273.72 from the date of the suit till payment or realisation.

2. During the period between 1983 and 1984 the

plaintiffs have sold, supplied and delivered to the defendants diverse quantities of Industrial Valves and plaintiffs have submitted various bills to the defendants from time to time. It was agreed between the parties that the defendants wold retain an amount equivalent to 5% of the bill and that they would pay the said retention money within a period of 36 months from the date of supplies. The defendants failed and neglected to submit to the plaintiffs CST Declaration Forms in respect of the said bills. By letter dated 19th December, 1987 plaintiff requested the defendants to forward the plaintiffs said CST Declaration forms and also to pay to the plaintiffs the amount at the foot of the said agreement. However, the defendants inspite of their letter dated 16.6.1987 promising to submit the said Declaration forms by 30th June 1987. Thereafter plaintiffs called upon the defendants to pay the sum of rs.50,273.72 comprise of 6% amount in lieu of CST Declaration forms and 5% retention money as noted earlier together accrued interest at the rate of 24% p.a. but defendants failed to do so, hence the suit.

3. The defendants filed their written statement raising various contentions and denied the claim of the

plaintiffs and sought dismissal of the plaintiffs suit.

4. The issues were settled on the basis of the pleadings of the parties. The issues and my findings thereon are as follows :

ISSUES:	FINDINGS:
1. Whether the plaintiffs prove that they are a partnership firm registered under the Indian Partnership Act, 1932?	In the affirmative.
2. Whether the plaintiffs prove that they had supplied goods under the bills mentioned in para 2 of the Complaint ?	In the affirmative.
3. Whether the plaintiffs prove that there was an agreement between the plaintiffs and the defendants that the defendants would retain an	

	amount equivalent to 5% of the bills aggregating Rs.22,851.69 and they would pay the retained money within a period of 36 months from the date of supply?	In the affirmative.
4.	Whether the plaintiffs prove that the defendants were required to submit to the plaintiffs Central Sales Tax Declaration Form in respect of the goods covered under the six bills ?	In the affirmative.
5.	Whether the plaintiffs are entitled to receive Rs.85,462.32 together with interest on Rs.50,273.72 at the rate of 24% per annum ?	In the affirmative.
6.	To what order ?	As per final order.

5. At the outset it may be noted that though the defendants have appeared and filed written statement they have failed to appear on the date of the hearing which was fixed peremptorily after giving due time to both the parties. The plaintiffs have entered the witness box and proved the contents of affidavit of evidence and documents in support of the suit claim. In the result the plaintiffs evidence has gone on record unchallenged, as the defendants have made absent. In view of this the Plaintiffs suit deserves to be decreed. Hence the order :

The suit stands decreed with costs.

The defendants shall pay an amount of Rs.85,465.32 to the plaintiffs along with interest @ 9% p.a. on principal amount of Rs.50,273.72 from the date of the suit till payment or realisation.

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